

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8494 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No

DIVISIONAL CONTROLLER

Versus

ABDULKADAR A SHEKH

Appearance:

MR YS LAKHANI for Petitioner
Respondent No. 1 - Party-in-person

CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 31/01/97

ORAL JUDGEMENT

1. Labour Court on an industrial reference under Section 10(1) of the Industrial Disputes Act, 1947 (I.D.Act), passed impugned order on 8.5.1996, whereby the order of dismissal recorded in departmental enquiry against the respondent - workman, came to be quashed and he came to be reinstated with 50 per cent back wages which is challenged by the petitioner Corporation by

filing this petition.

2. When the matter was called out today, the learned Advocate Mr. Lakhani appeared for petitioner Corporation and the respondent, who is personally present in the court, had shown his badge number on requesting him to show his identity, contended that reasonable view may be taken in the matter as he is a poor person with big family and he does not want to engage the advocate.

3. The Labour Court has rightly considered the grounds submitted on behalf of the respondent - workman for remaining absent at the relevant time. The departmental enquiry had initiated against the respondent - driver on the ground that he had remained absent without getting his leave sanctioned. Upon this charge, the petitioner - Corporation after holding an enquiry, recorded an order of dismissal, which rightly came to be quashed by the Labour Court considering the facts and circumstances emerging from the record of the present case and the underlying purpose and design behind Section 11-A of the I.D. Act. The order of Labour Court for reinstatement is required to be confirmed whereas the direction for payment of 50 per cent of the back wages in the peculiar facts and circumstances, requires to be modified. The respondent - workman who is present in the court contended that reasonable percentage of back wages may be awarded. Considering the facts and circumstances, the ends of justice would be met if the back wages is awarded to the extent of 30 per cent instead of 50 per cent as granted by the Labour Court in the impugned award. It appears from the record that the respondent driver remained absent from the duty without sanction and permission from the authority concerned. The delinquency of the driver is accepted as proved even by the Labour Court and, therefore, some punishment ought to have been awarded for misconduct established in the domestic enquiry. In the opinion of this Court, after hearing the respondent - workman, who is present in the court, withholding of two increments for two years without future effect would be reasonable and just in view of the peculiar facts and circumstances.

4. Before parting, it may be noted that considering the old pending dispute and arrears of back wages, the petitioner Corporation is directed to pay back wages as directed by this court herein before within a period of four weeks and to reinstate the respondent - driver - workman forthwith, if he is not so far reinstated.

5. In the result, the petition is partly allowed and

the impugned Award is modified to the extent that there shall be withholding of two increments for a period of two years without future effect and the back wages shall be only 30 (thirty) per cent instead of 50 percent awarded by the Labour Court. Accordingly, this petition stands partly allowed. Rule is made absolute to the aforesaid extent only with no order as to costs.
